the contention that this and other riparian rights were to be determined by state law, and thus, if by the rule in the particular state where the plaintiff's land was situated this right of access was considered to be property, compensation was requisite, the power of Congress to make provision for interstate commerce being subject to the Fifth Amendment.

In the state courts there is a hopeless conflict on the question whether this right of access is property or not. Lewis, Eminent Domain, 2d ed. § 77 *et seq.* And in general the cases do not seem to turn on the ownership of the bed of the stream, as might at first be supposed. The majority in the principal case appears to have considered themselves bound by the case of *Gibson* v. *United States*, 166 U. S. 269, where it was held that the destruction of the means of access to the Ohio River during seven out of every twelve months by a submerged dike put up to improve navigation was not protected by the Fifth Amendment. Indeed this decision would seem to conclude the present case. To the contention of the minority that the determination whether this is a "taking of property" should be left to the state courts, the obvious reply is that this is essentially a federal question — whether an improvement to navigation which is authorized by the "Commerce Clause" and which impairs the value of the adjoining land is such a "taking of property" as was contemplated by the Fifth Amendment. Besides, most of the cases relied on by the minority in this regard are those where the federal court considered itself bound by state adjudications upon the question whether the abutter or the public owned the fee of a navigable river. *Shively* v. *Bowlby*, 152 U. S. 1. Such a rule in considering questions of the law of property is quite a different matter from saying that a state's interpretation of a clause in its own constitution shall be conclusive upon the Supreme Court in interpreting a similar clause in the Federal Constitution. And considering the question upon those broad principles which should govern in constitutional questions, it may well be said that a riparian owner holds his property subject to the implied condition in regard to his ownership that the sovereign may make improvements in facilitating navigation even though the abutter suffers thereby a consequential injury.

Secret Antenuptial Conveyances. — In both England and America, it has long been recognized that a secret antenuptial conveyance, without consideration, by a wife is a fraud on her intended husband's marital rights, and may be set aside in equity. In England this doctrine has never been extended to cover such conveyances by the husband, but this is largely due to the fact that the custom of jointure which prevails there to a great extent has rendered dower a comparatively unimportant right. In the United States, however, where this system is not generally adopted, courts have usually set aside such conveyances by the husband. *Chandler* v. *Hollingsworth*, 3 Del. Ch. 99. A recent decision by the Ohio court is in line with the prevailing view. A widower with three sons, just before a second marriage, and without the knowledge of his intended wife, made a gratuitous conveyance of a portion of his land to his sons. It was held that his widow was nevertheless entitled to dower in the land conveyed. *Ward* v. *Ward*, 57 N. E. Rep. 1095.

The true principle underlying this doctrine has only recently been pointed out. In early times, the courts rested it upon deceit and disap-

pointment of expectations; later it was put upon the ground that, during the marriage treaty, there existed an inchoate dower interest. *Chandler* v. *Hollingsworth*, *supra*. The accepted view at present, however, is that during the betrothal the parties stand in so close and confidential a relationship as to give rise to a duty to exercise the utmost good faith. The intended wife has the same interest as the husband in the family establishment and in all that concerns its future support and maintenance. Such an undisclosed conveyance is therefore inconsistent with the good faith and honesty which the relations of the parties demand. *Arnegaard* v. *Arnegaard*, 7 N. Dak. 475.

The question has come up as to how far other circumstances, as a desire to make provision for children by a former marriage, should have weight in equity to remove the imputation of bad faith. It has been held that a reasonable provision for the grantor's children will be protected so long as it is not done solely to defeat the dower rights of the intended wife. *Fennessey* v. *Fennessey*, 84 Ky. 519. In general, however, courts treat mere non-disclosure as conclusive. It is to be remembered that even if the stricter view be adopted, a man may still make whatever provision he thinks fair for his children. Only in carrying out this moral duty he must not disregard the higher duty of good faith with his intended wife, and must at least inform her of his intention. Again, if such qualifications are considered, it is extremely difficult to draw a satisfactory line. Whether this disadvantage is outweighed by the possibility of injustice in a few cases is only a question of expediency. On either view, however, the decision in the principal case may be supported.

Restrictions upon the Cy-Pres Doctrine. — An interesting question of how far the *cy-près* doctrine will be applied was involved in a late English decision. A testator bequeathed certain property to trustees to pay the income to his wife for life, remainder to his son for life, and, in the event of his son's dying without issue, the property to go to the Draper's College, a charitable institution. After the testator's death, but before the death of his son without issue, the college ceased to exist. The court held that the fund should be applied *cy-près*. *In re Soley*, 17 Times L. R. 118. The case would seem clearly right were it not that a distinction has been made as to whether the gift has ever become vested in the institution. If a general charitable intention can be inferred, but the institution chosen as the mode of effecting this charitable purpose ceases to exist after it has become entitled to the fund, the intention will be carried out *cy-près*. *In re Slevin*, [1891] 2 Ch. 236. But where the institution ceases to exist during the testator's lifetime, it has been treated as an ordinary lapsed legacy, and the doctrine of *cy-près* has not been applied. *In re Ovey*, 29 Ch. D. 560. The authority upon which this distinction rests is at least questionable. The modern cases that have developed it are based upon a misconception of several earlier cases where obviously the doctrine of *cy-près* had no application because the testator in them showed no general charitable intent, but only a desire to benefit a particular institution. 1 Jarman on Wills, 4th ed. 246. However, although the later cases do not refer to it, there is a still earlier case which bears out the distinction. *Clark* v. *Foundling Hospital*; Highmore on Mortmain, 552.